

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:03-CR-156-1H

JAMES DAVID SMITH,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ORDER

This matter is before the court on Petitioner's motion to vacate pursuant to 28 U.S.C. § 2255. Respondent moved for summary judgment [DE #25], and Petitioner responded by submitting supplemental authority [DE #30].

In its motion for summary judgment, Respondent cites United States v. Weeks, 711 F.3d 1255 (11th Cir. 2013), for the proposition that the Florida burglary statute under which Petitioner sustained multiple convictions forming the basis for predicate offenses under the Armed Career Criminal Act ("ACCA") is divisible, and therefore, should be analyzed under the modified categorical approach for ACCA purposes. Consequently, Respondent submitted Shepard documents in support of its position that Petitioner's prior Florida burglary convictions qualify as predicates under ACCA.

United States v. Esprit, 841 F.3d 1235 (11th Cir. 2016), appears, based on the Supreme Court's ruling in Mathis v. United States, 136 S. Ct. 2243 (2016), to effectively overrule Weeks' ruling regarding the Florida burglary statute under which Petitioner was previously convicted and the eligibility of such convictions to enhance a sentence under ACCA. Esprit, 841 F.3d at 1241.

Therefore, Respondent is directed to file supplemental briefing based on Mathis v. United States, 136 S. Ct. 2243 (2016) and United States v. Esprit, 841 F.3d 1235 (11th Cir. 2016), as to whether Petitioner's prior Florida burglary convictions are violent felonies under ACCA within ten (10) days of this Order.

Additionally, the Office of the Federal Public Defender is hereby directed to appoint counsel to represent Petitioner in this matter. The clerk is directed to send copies of this order to the Office of the Federal Public Defender and to Petitioner.

This 24th day of October 2017.



Malcolm J. Howard
Senior United States District Judge